

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES FERRARI,

Plaintiff,

v.

JODY LEBARRE, et al.,

Defendants.

Case No. 2:18-cv-125

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983, naming thirty-two defendants. Defendant Borgerding, the sole remaining defendant, moved for summary judgment based on Plaintiff's alleged failure to exhaust his administrative remedies. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues that the Magistrate Judge erred in concluding that Plaintiff failed to exhaust all remedies necessary to bring a claim against Defendant (ECF No. 39 at PageID.228). According to Plaintiff, the Magistrate Judge incorrectly found that Plaintiff only filed "one" grievance (*id.*; ECF No. 40 at PageID.237-238). Plaintiff's argument is misplaced inasmuch as the argument is a mischaracterization of the Magistrate Judge's statement that Defendant "only pursued one

grievance through Step III” (ECF No. 38 at PageID.226). The Magistrate Judge was not indicating the total number of grievances Plaintiff filed, only that one grievance had been administratively exhausted through the grievance appeal process. Plaintiff’s objection is therefore properly denied.

Plaintiff also argues that he was not required to name all of the parties in his original complaint (ECF No. 39 at PageID.229; ECF No. 40 at PageID.239). Again, Plaintiff’s argument is misplaced. The Magistrate Judge’s analysis turned on his finding that Plaintiff’s claim against Defendant Borgerding was “never memorialized in the form of a grievance” (R&R, ECF No. 38 at PageID.226-227). For these reasons, this objection is also properly denied.

Therefore, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves the last pending claim in this case, the Court will also enter a Judgment consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. The Court declines to certify, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Accordingly:

IT IS HEREBY ORDERED that Plaintiff’s Objections (ECF No. 39, as supplemented by ECF No. 40) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 38) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment (ECF No. 33) is GRANTED.

Dated: March 9, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge